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Pannex Painting Company, Inc. and Painters District Council No. 14 of the International Union of Painters and Allied Trades (of Chicago, Cook, Lake, Will and Grundy Counties, Illinois). Case 13-CA-41322

October 29, 2004

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN
AND WALSH

The General Counsel seeks a default judgment in this case on the ground that the Respondent has failed to file an answer to the reissued complaint. Upon a charge and first amended charge filed by the Union on September 15 and November 26, 2003, respectively, the General Counsel issued the original complaint on January 27, 2004, against Pannex Painting Company, Inc., the Respondent, alleging that it had violated Section 8(a)(1) and (3) of the Act.

Subsequently, on May 19, 2004, the Respondent and the Charging Party Union entered into an informal settlement agreement, which was approved by the Regional Director on May 24, 2004. The settlement agreement required the Respondent to, among other things, (1) pay \$2000 in backpay to employee Jesus Perez and (2) post a notice to employees regarding the complaint allegations. The settlement agreement also provided that

Approval of this Agreement by the Regional Director shall constitute withdrawal of any Complaint(s) and Notice of Hearing heretofore issued in this case, as well as any answer(s) filed in response.

On August 17, 2004, the Regional Director set aside the settlement agreement, withdrew his approval of the agreement, and issued a reissued complaint and notice of hearing on the ground that the Respondent had failed to fully comply with the terms of the settlement agreement, including by failing to pay \$2000 in backpay to employee Perez.¹

The reissued complaint provided that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regu-

¹ The reissued complaint and notice of hearing was sent to the Respondent and its last legal counsel of record by certified mail. The envelope sent to the Respondent containing the reissued complaint was returned to the Regional Office by the Postal Service marked "Refused." It is well settled that a respondent's failure or refusal to accept certified mail or to provide for appropriate service cannot serve to defeat the purposes of the Act. See, e.g., *I.C.E. Electric, Inc.*, 339 NLRB No. 36, fn. 2 (2003), and cases cited there.

lations, the Respondent was required to file an answer to the reissued complaint within 14 days from service of it. By letter dated August 24, 2004, counsel for the General Counsel advised the Respondent that unless it filed an answer by September 7, 2004, a motion for default judgment would be filed. The Respondent has not filed an answer to the reissued complaint.

On September 21, 2004, the General Counsel filed a Motion for Default Judgment with the Board. On September 30, 2004, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Default Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the reissued complaint affirmatively stated that unless an answer was filed within 14 days from service of the complaint, all the allegations in the complaint would be considered admitted. Further, the undisputed allegations in the General Counsel's motion disclose that the Region, by letter dated August 24, 2004, notified the Respondent that unless an answer was received by September 7, 2004, a motion for default judgment would be filed. As stated above, however, the Respondent has failed to file an answer to the reissued complaint.

Accordingly, in the absence of good cause being shown for the failure to file an answer, we grant the General Counsel's motion for default judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, an Illinois corporation with an office and place of business in Franklin Park, Illinois, has been engaged in the business of industrial painting.

During the calendar year preceding issuance of the reissued complaint, a representative period, the Respondent, in conducting its business operations described above, performed services valued in excess of \$50,000 in States other than the State of Illinois.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that Painters District Council No. 14 of the International Union of Painters and Allied Trades

(of Chicago, Cook, Lake, Will, and Grundy Counties, Illinois) is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, the following individuals held the positions set forth opposite their respective names and have been supervisors of the Respondent within the meaning of Section 2(11) of the Act and agents of the Respondent within the meaning of Section 2(13) of the Act:

Dmitri Xenikakis	Co-Owner; Chief Operating Officer
John Xenikakis	Co-Owner

On about August 26, 2003, the Respondent, by John and Dmitri Xenikakis, at a hotel in Beloit, Wisconsin, interrogated employees about their union activities.

On about August 26, 2003, the Respondent discharged its employee Jesus Perez, and since that date has failed and refused to reinstate him.

The Respondent discharged Perez because he engaged in union and/or protected concerted activities, and to discourage employees from engaging in these activities.

CONCLUSION OF LAW

By interrogating employees about their union activities, the Respondent has interfered with, restrained, and coerced employees in the exercise of the rights guaranteed them by Section 7 of the Act, in violation of Section 8(a)(1) of the Act. In addition, by discharging Jesus Perez, the Respondent has discriminated in regard to the hire or tenure or terms and conditions of employment of its employees, thereby discouraging membership in a labor organization, in violation of Section 8(a)(3) and (1) of the Act. The Respondent's unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.² Specifically, having found that the Respondent violated Section 8(a)(3) and (1) by discharging employee Jesus Perez, we shall order

² We note that the parties' settlement agreement provided for the posting of notices to employees in both English and Spanish. In light of this, we have provided for a Spanish language translation of the Board's notice.

Chairman Battista notes that the settlement agreement has been set aside, and thus cannot be relied upon for the above provision. However, he sees no harm or prejudice in providing a Spanish language translation of the Board's notice.

the Respondent to offer Perez full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights and privileges previously enjoyed. We shall also order the Respondent to make Perez whole for any loss of earnings and other benefits suffered as a result of the discrimination against him. Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

The Respondent shall also be required to remove from its files all references to the unlawful discharge of Perez, and to notify him in writing that this has been done and that the discharge will not be used against him in any way.

ORDER

The National Labor Relations Board orders that the Respondent, Pannex Painting Company, Inc., Franklin Park, Illinois, its officers, agents, successors, and assigns, shall

1. Cease and desist from
 - (a) Interrogating employees about their union activities.
 - (b) Discharging employees because they engage in union or protected concerted activities.
 - (c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.
2. Take the following affirmative action necessary to effectuate the policies of the Act.
 - (a) Within 14 days from the date of this Order, offer Jesus Perez full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights and privileges previously enjoyed.
 - (b) Make Jesus Perez whole for any loss of earnings and other benefits suffered as a result of his unlawful discharge, with interest, in the manner set forth in the remedy section of this decision.
 - (c) Within 14 days from the date of this Order, remove from its files all references to the unlawful discharge of Jesus Perez, and within 3 days thereafter, notify Perez in writing that this has been done and that the unlawful discharge will not be used against him in any way.
 - (d) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic

form, necessary to analyze the amount of backpay due under the terms of this Order.

(e) Within 14 days after service by the Region, post at its facility in Franklin Park, Illinois, copies of the attached notice marked "Appendix."³ Copies of the notice, on forms provided by the Regional Director for Region 13, after being signed by the Respondent's authorized representative, shall be translated into Spanish, and both Spanish and English notices shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since August 26, 2003.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. October 29, 2004

Robert J. Battista, Chairman

Wilma B. Liebman, Member

Dennis P. Walsh, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

³ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the

National Labor Relations Board

An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT interrogate employees about their union activities.

WE WILL NOT discharge employees because they engage in union or protected concerted activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, within 14 days from the date of the Board's Order, offer Jesus Perez full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights and privileges previously enjoyed.

WE WILL make Jesus Perez whole for loss of earnings and other benefits resulting from his unlawful discharge, with interest.

WE WILL, within 14 days from the date of the Board's Order, remove from our files all references to the unlawful discharge of Jesus Perez, and WE WILL, within 3 days thereafter, notify him in writing that this has been done and that the unlawful discharge will not be used against him in any way.

PANNEX PAINTING COMPANY, INC.